



## AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. The Bulletin occasionally includes information on legislative changes that affect the AAT and other important developments.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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## AAT Recent Decisions

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This section of the Bulletin provides information about decisions recently published by the AAT. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

### Compensation

[Balacki and Comcare](#) [2013] AATA 768; 28/10/2013; Deputy President SA Forgie

Disease – Chronic pain syndrome - Pain suffered during work tasks – Pain suffered outside of work tasks – Work tasks do not aggravate or accelerate underlying condition – Pain is response of underlying condition to tasks or activities performed - Decision under review affirmed

WORDS AND PHRASES – “to a significant degree”

### Higher Education

[Mills and Secretary, Department of Education](#) [2013] AATA 765; 25/10/2013; Deputy President K Bean

Student assistance – Whether applicant's circumstances constituted “special circumstances” justifying remission of HECS-HELP debt – Decision under review affirmed

### Immigration and Citizenship

[JDNZ and Minister for Immigration and Border Protection](#) [2013] AATA 771; 30/10/2013; Deputy President JW Constance

Visa cancellation under s 501 *Migration Act 1958* (Cth) – Character test – Direction [no. 55] – Substantial criminal record – Protection of Australian community from criminal or other serious conduct – Nature and seriousness of the conduct – Risk to the Australian community should the conduct be repeated – Likelihood of engaging in further criminal or other serious conduct – Strength, duration and nature of ties to Australia – Best interests of minors in Australia affected by the decision – Whether risk of future harm acceptable – Decision under review set aside

[Mackenzie and Minister for Immigration and Border Protection](#) [2013] AATA 774; 1/11/2013; Senior Member JL Redfern

Class TY Subclass 444 Special Category (Temporary) visa – Cancellation – Character test – Discretion to cancel visa – Primary considerations – Protection of the Australian community – Strength, duration and nature of ties to Australia – Other considerations – Decision under review affirmed

[Wong and Minister for Immigration and Border Protection](#) [2013] AATA 710; 3/10/2013; Senior Member AK Britton

Citizenship application – Residence requirement – Whether the Applicant has a close and continuing association with Australia – Meaning of “a period” in section 22(9) of the *Australian Citizenship Act 2007* (Cth) – Decision under review affirmed

## Social Security

[Chang and Secretary, Department of Social Services](#) [2013] AATA 772; 30/10/2013; Senior Member RM Creyke

Disability support pension (DSP) – DSP suspended – Whether applicant entitled to unlimited portability of DSP – Whether ‘severely impaired disability support pensioner’ – Applicant’s DSP suspended – Applicant not receiving DSP – Not eligible for unlimited portability – Decision under review affirmed

[Jenkins and Secretary, Department of Social Services](#) [2013] AATA 779; 1/11/2013; Senior Member N Bell

Disability support pension – DSP – Impairment tables – Applicant meets required impairment rating requirement – Decision under review set aside

[Muller and Secretary, Department of Social Services](#) [2013] AATA 767; 28/10/2013; Dr P McDermott RFD, Senior Member

Carer allowance – Carer payment – Whether care addressing special care needs for at least 20 hours per week – Whether applicant provides “constant care” – Decision under review affirmed

[Tripp and Secretary, Department of Social Services](#) [2013] AATA 770; 30/10/2013; Deputy President RP Handley

Debt – Maternity Payment and Family Tax Benefit – Whether the applicant was an Australian resident during the relevant period – Whether the applicant was eligible to receive Family Tax Benefit – Whether the applicant was eligible to receive a Maternity Payment – Whether the Family Tax Benefit received by the applicant was an overpayment and a debt due to the Commonwealth – Whether the debt should be written-off or waived – Decision under review set aside and remitted

## Taxation

[Murray and Commissioner of Taxation](#) [2013] AATA 780; 1/11/2013; Deputy President PE Hack SC

Income tax – Whether Australian resident – Decision under review set aside and remitted

[Zarev and Commissioner of Taxation](#) [2013] AATA 777; 30/10/2013; The Hon R Nicholson, Deputy President

GST – Review of respondent’s decision of an objection – (1) Input tax credits – Concessions made by respondent – Effect of applicant’s assertions in the absence of proof – Decision affirmed – (2) Penalty assessment – Appropriateness of 50% penalty – Decision affirmed – (3) Respondent’s concession to allow decision cancelling applicant’s GST registration to be set aside

## Veterans' Affairs

[Holden and Repatriation Commission](#) [2013] AATA 778; 1/11/2013; Senior Member GD Friedman

Veterans' entitlements – Widow's claim – Death from ischaemic heart disease – Whether the veteran suffered from PTSD or other psychiatric condition – Whether psychiatric condition contributed to ischaemic heart disease – Decision under review set aside and substituted

[Kirk and Repatriation Commission](#) [2013] AATA 773; 25/10/2013; The Hon R Nicholson, Deputy President

Veterans' entitlements – Disability pension – Applicant served in Royal Australian Navy from January 1967 to January 1971 – Applicant rendered operational service 14–25 May 1969 – Applicant suffers from posttraumatic stress disorder ("PTSD") – Material before Tribunal raises hypothesis that applicant's PTSD connected with operational service – Statement of Principles concerning posttraumatic stress disorder No 5 of 2008 – Whether hypothesis caused by veteran's operational service – Decision under review set aside and substituted

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## Appeals

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This section of the Bulletin provides information about appeals against AAT decisions that have been lodged or finalised. Only appeals in relation to AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

### Appeals lodged

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CASE NAME	AAT REFERENCE
<b>Roberts-Billett v Commonwealth Superannuation Corporation</b>	<a href="#">[2013] AATA 440</a>
<b>James v Repatriation Commission</b>	<a href="#">[2013] AATA 700</a>
<b>Morris v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs &amp; Secretary, Department of Education, Employment and Workplace Relations</b>	<a href="#">[2013] AATA 718</a>
<b>Marsh v Civil Aviation Safety Authority</b>	<a href="#">[2013] AATA 729</a>
<b>Kennedy v Comcare &amp; AAT</b>	<a href="#">[2013] AATA 696</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Conway v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs</b>	<a href="#">[2013] AATA 403</a>	<a href="#">[2013] FCA 1106</a>
<b>Allen v Secretary, Department of Education, Employment and Workplace Relations &amp; Secretary, Department of Families, Housing, Community Services and Indigenous Affairs &amp; AAT</b>	<a href="#">[2012] AATA 912</a>	VID74/2013
<b>Grace Heiner, by her next friend Philip Heiner v Minister for Immigration and Citizenship</b>	<a href="#">[2012] AATA 933</a>	VID701/2013 <a href="#">[2013] FCA 617</a>
<b>Commissioner of Taxation v AAT &amp; Walters &amp; Walters</b>	<a href="#">[2013] AATA 151</a>	VID285/2013
<b>Comcare v PVYW</b>	2010/0327	<a href="#">[2013] HCA 41</a> <a href="#">[2012] FCAFC 181</a> <a href="#">[2012] FCA 395</a>
<b>Muliaga v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2010] AATA 1034</a>	<a href="#">[2013] HCATrans 227</a> <a href="#">[2011] FCA 1168</a>

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**Paerau v Minister for Immigration and  
Border Protection**

[\[2012\] AATA 798](#)

[\[2013\] FCA 1119](#)

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**Mladenov v Secretary, Department of  
Families, Housing, Community Services  
and Indigenous Affairs & Secretary,  
Department of Education, Employment  
and Workplace Relations**

2012/4286

[\[2013\] FCA 1129](#)

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